

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**JANICE SHORTER, PERSONAL
REPRESENTATIVE AND LEGAL
GUARDIAN FOR
DONSHAY SAYLES,
Plaintiff**

V.

CHARLES E. SAMUELS, JR., ET AL.
Defendants

[illegible]

NO. 3:16-CV-01973

(Judge Mannion)
(Magistrate Judge Arbuckle)

Electronically Filed

**PLAINTIFF DONSHAY SAYLES'
MOTION UNDER RULE 30(a)(2)(B)**

Plaintiff Donshay Sayles, through his legal guardian Janice Shorter, and by and through his counsel, respectfully moves this Honorable Court under Federal Rule of Civil Procedure 30(a)(2)(B) for leave to take the trial deposition of federal inmate Joseph Wing, who is currently incarcerated by the federal Bureau of Prisons (BOP) at USP Florence – ADMAX, in Florence, Colorado.

In support of this motion, Plaintiff states the following:

1. On September 15, 2022, Defendants moved under Rule 30(a)(2)(B) to take the deposition of Joseph Wing. [ECF No. 209]

2. This Court granted Defendants' motion the same day. [See ECF No. 210]
3. Defendants then issued a notice and subpoena for that deposition to occur via Web-Ex video conference on December 5, 2022, with Mr. Wing participating from the federal supermax prison in Colorado.
4. On December 5, 2022, Mr. Wing and counsel for the parties in this case joined a telephone conference for the purpose of conducting Mr. Wing's deposition. A court reporter was present with defense counsel at their office in Harrisburg, PA.
5. At the beginning of the telephone conference, Mr. Wing stated that he refused to participate in the deposition and would not agree to be sworn in.
6. Mr. Wing expressed concern with the deposition being conducted by telephone instead of Web-Ex video conferencing, as had been stated in the deposition subpoena.
7. Mr. Wing also expressed concern with not having an attorney to represent him during the deposition.¹
8. Mr. Wing also expressed his annoyance and frustration with both defense counsel and Plaintiff's counsel, for various reasons.
9. Mr. Wing also expressed the view that there was no means by which he could be compelled to testify at a deposition, given that he was already serving a life sentence and had no money which could be collected as a fine.

¹ Undersigned counsel believes this is a legitimate concern. Counsel intends to seek the Court's assistance and guidance in resolving this issue prior to Mr. Wing's deposition being taken.

10. Undersigned counsel is not certain, but it appears that Mr. Wing believes that his change of plea/ sentencing hearing on January 15, 2015 in the criminal case stemming from the same underlying incident here (*United States v. Wing*, No. 3:14-cr-00156, Middle District of Pennsylvania), should be sufficient as his testimony regarding the issues in this case and that he therefore should not be required to testify again on these issues.
11. The proceedings concluded on December 5, 2022 without Mr. Wing's deposition being taken.
12. Counsel for Defendants, AUSA Richard Euliss, has informed Plaintiff's counsel that Defendants no longer intend to take Mr. Wing's deposition.
13. Mr. Wing is a critical witness in this case, as he carried out the in-cell assault on Donshay Sayles in the SHU at USP Canaan.
14. Mr. Wing is currently incarcerated at USP Florence – ADMAX, the federal supermax prison located in Florence, Colorado.
15. Plaintiff, having the burden of proof, needs to take Mr. Wing's trial deposition in order to obtain his testimony on matters that are highly relevant to the claims and defenses in this case.
16. Therefore, Plaintiff seeks to take the trial deposition of Mr. Wing, via videoconferencing and videotaped, so that his testimony is admissible in the trial of this case in the event that he is not available to testify at trial.

17. Plaintiff's counsel has sought defense counsel's concurrence in this motion and was informed that defense counsel does not oppose Plaintiff taking a discovery deposition of Mr. Wing (subject to the parties seeking the Court's input on the counsel issue), but does oppose Plaintiff taking a trial deposition of Mr. Wing.
18. In accordance with Local Rule 7.5, a brief supporting this motion is being filed concurrently with this motion, in view of Defendants' non-concurrence.
19. A proposed Order is attached hereto.

WHEREFORE, for all of the above reasons, Plaintiff respectfully asks this Court to grant his motion to take a trial deposition of witness Joseph Wing, who is a federal inmate.

Date: December 22, 2022

Respectfully submitted,

/s/ Jennifer J. Tobin

Jennifer J. Tobin, PA Bar 202047
TOBIN LAW OFFICE, LLC
702 N. 3rd Street, # 71
Philadelphia, PA 19123
Tel. 267-258-8918
Fax: 267-428-6493
jtobin0913@gmail.com

/s/ Christopher J Heavens

Christopher J. Heavens, PA Bar No. 64645
2312 Chichester Avenue
P.O. Box 1948
Boothwyn, P A 19061
Tel: 610-485-7989
Chris@heavenslawfirm.com

/s/Jay T. McCamic

Jay T. McCamic, PA Bar 67881
McCamic Law Firm, PLLC
80 12th Street, Suite 305
Wheeling, WV 26003
p: (304) 238-9460
f: (304) 830-5324
jay@mccamic.com

W. Perry Zivley, Jr., Esq.
Chandler, Mathis & Zivley, PC
8584 Katy Freeway, Suite 105
Houston, Texas 77024
Phone: (713) 739-7722
pzivley@cmzlaw.net

Anthony I. Werner, Esq.
John & Werner Law Offices PLLC
80-12th Street
Suite 200
Wheeling, WV 26003
Phone 304.233.4380
Fax 304.233.4387
awerner@johnwernerlaw.com

CERTIFICATE OF SERVICE

I certify that on this date, a true and correct copy of the foregoing, along with any and all attachments, was electronically filed and is available for viewing and downloading from the Court's ECF system. In addition, a copy was served via the Court's ECF notification system on the following:

Richard D. Euliss
Harlan Glasser
Assistant U.S. Attorneys
United States Attorney's Office
Middle District of Pennsylvania
228 Walnut Street, 2nd Floor
P.O. Box 11754
Harrisburg, PA 17108-1754
Email: Richard.D.Euliss@usdoj.gov
Harlan.Glasser@usdoj.gov

Attorneys for Defendants

Date: December 22, 2022

/s/ Jennifer J. Tobin
Jennifer J. Tobin